

local competition and diversity of viewpoints . Whether or not the FCC retains the UHF discount, broadcasters will remain subject to the television ownership rules which restrict the number of stations a single entity may own in a local market.^{54/} Even with the changes to the ownership rules that have been proposed, including Paxson's proposal set forth in its Comments,^{55/} broadcasters essentially will be limited to owning one television station per market. The UHF discount, accordingly, will not change the ownership or competitive structure of local markets.

F. The Increase in the National Audience Cap Has Not Eliminated the Need for the UHF Discount.

There is no basis for any argument that the increase in the national audience cap to 35% eliminates the need for the UHF discount. ALTV's Comments make it quite clear that there was no intent on the part of Congress in enacting the Telecommunications Act of 1996^{56/} to substitute the 35% cap for the then-existing 25% cap coupled with the UHF discount.^{57/} Indeed, had Congress intended a change in or elimination of the UHF discount, it surely would have included such a provision in the 1996 Act.

Moreover, as noted by ALTV, Congress's clear intention in adopting the 35% cap and eliminating the numerical limit on station ownership was *to relax*, not tighten, the national ownership limits. Elimination of the UHF discount would plainly run counter to Congress's

^{54/} 47 C.F.R. § 73.3555(b) (1997).

^{55/} Paxson Comments at 31.

^{56/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

^{57/} ALTV Comments at 2-3.

intent. A 35% national audience reach cap without the UHF discount *would be more restrictive* than a 25% cap and the UHF discount! For instance, based on its current ownership and assuming it retained ownership of its stations in the largest markets, under a 25% cap and the UHF discount, Paxson would be permitted to own 29 stations nationwide. If Paxson were subject to the 35% ownership cap, and without applying the UHF discount, it would be permitted to own only 13 television stations. Clearly, this is not the result that Congress intended when it enacted the 1996 Act.

III. THE NATIONAL OWNERSHIP RULE.

Paxson reaffirms the proposal set forth in its Comments that the Commission increase the national audience share cap to 40%. A 40% limit would reflect the realities of the video programming marketplace, as described above, with no impact on diversity and competition in local markets. An increase in the audience share cap also would result in increased investment in small-market and minority-owned television stations.

To establish truly meaningful incentives for minority and small business investment, Paxson proposes that the Commission not apply the audience share cap to ownership interests in stations owned and controlled by minority entities and new entrants, or in the alternative, increase the cap above 40% with respect to those stations that would be minority-owned.

Earlier this year, FCC Chairman Kennard called upon broadcasters to identify ways to increase minority ownership of broadcast stations.^{58/} Numerous broadcasters, including Paxson, have responded to the Chairman's call. On July 1, 1998, Paxson submitted to Chairman Kennard

^{58/} William E. Kennard, *An Era of Opportunity*, Remarks to National Association of Broadcasters, Las Vegas, Nevada (Apr. 7, 1998).

its "Proposal to the FCC to Increase Broadcast Diversity" (the "Paxson Diversity Plan") proposing a unique government-industry initiative that would seek to overcome traditional barriers to minority ownership. Paxson noted in its proposal that minority-owned broadcasters are often unable to access sufficient capital resources or obtain high quality programming, both of which are critical to survival in the highly competitive video programming industry. Under the Paxson Diversity Plan, minority-owned broadcasters could overcome these obstacles by entering into agreements with programming and/or financial sources for the construction and programming of new stations. In addition to providing programming and/or financial support, such sources would be permitted to hold a 33% equity ownership interest in a station, provided it was minority-controlled, without triggering the FCC's ownership attribution rules. By adopting the Paxson Diversity Plan, the Commission would create sufficient incentive on the part of established broadcasters to make these program and financing investments, resulting in increased minority ownership and an increased number of television stations in operation.

Paxson also supports adoption of the Designated Entity ("DE") proposal set forth in the Comments filed by Council Tree Communications, LLC ("Council Tree").^{59/} Council Tree's proposal relies on an established ownership exception for investors in small businesses that is currently applied to other communications services regulated by the Commission.^{60/} The DE exception would allow small businesses, including minority-owned small businesses, meeting

^{59/} Comments of Council Tree Communications, LLC, MM Docket No. 98-35, filed July 21, 1998, at 7 ("Council Tree Comments").

^{60/} *Id.* at 7-8.

relevant statutory criteria, to attract financial and program investments without their investors being subject to the ownership rules, creating a win-win situation for all involved.

As noted in both Paxson's and Council Tree's comments, the traditional barriers to minority ownership are not simply going to go away. Instead, the FCC must take some affirmative step now to develop a workable legal strategy for fostering minority ownership. Council Tree's DE proposal and the Paxson Diversity Plan, if adopted, could easily accomplish this goal.

IV. THE DUAL NETWORK RULE.

ABC's and CBS's comments demonstrate that the "dual network" rule^{61/} no longer serves the public interest and should be eliminated.^{62/} Despite the enormous changes in the video programming market over the past several years,^{63/} this outdated restriction continues to prevent the ownership of certain television (but not radio) broadcast (but not syndication) networks by other television (but not cable) networks. Today's marketplace bears only a slight resemblance to that which existed at the rule's adoption, and, as such, the Commission should now permit the market, with appropriate oversight by expert antitrust agencies, to achieve further efficiencies and thus advance the public interest by repealing the archaic dual network rule.

While the traditional network/affiliate relationship remains mostly unchanged, the role of broadcast networks in the video programming market has changed dramatically. As detailed by numerous other commenters and as set forth elsewhere in these Reply Comments, the "Big

^{61/} 47 C.F.R. § 73.658(g) (1997).

^{62/} See ABC Comments at 24-26; CBS Comments at 22-28.

^{63/} See, e.g., NAB Comments at 4-5; Paxson Comments at 28.

Three" networks no longer attract the vast majority of television audiences, dominate the video programming marketplace or command the rankings of profitable television networks.^{64/} The major networks face intense competition for viewers and advertisers from an established fourth broadcast network, several emerging broadcast networks, the powerful cable and satellite program providers (which, unlike broadcast networks, derive revenue from advertisers as well as subscribers), and alternative video program suppliers, as well as from non-video media outlets such as radio, newspapers, magazines, billboard providers and the Internet.^{65/}

In this competitive world, each of the television broadcast networks is struggling to reinvent itself. The major networks own a small fraction of their affiliates, but, according to press accounts, are eagerly seeking ways to redefine and renegotiate the network-affiliate relationships in order to improve their competitive positions.^{66/} Meanwhile, Fox, UPN and WB rely on a large number of owned stations to ensure the broadest distribution of their programming, and, in turn, the success of their networks. Similarly, the viability of PAXTV, the nation's seventh broadcast network and its first network dedicated to family programming, depends to a significant extent on the widespread distribution network of Paxson's 49 owned and operated television stations.^{67/} In these and many other ways, the broadcast networks are

^{64/} See, e.g., ABC Comments at 24-25.

^{65/} See, e.g., NAB Comments at 4-5.

^{66/} *Can the Big 4 still make big bucks? Costs, competition and audience erosion are changing the business of network TV*, BROADCASTING & CABLE, June 8, 1998, at 24; *Fox, CBS, ABC still seeking affiliates' help in paying for NFL rights*, COMMUNICATIONS DAILY, May 15, 1998; *NBC's profit-making joint venture on table at affiliates' convention*, COMMUNICATIONS DAILY, May 13, 1998; *Chaos at big 3 networks provides opportunities for Fox, Carey says*, COMMUNICATIONS DAILY, Jan. 21, 1998.

^{67/} See generally Paxson Comments at 14-17.

searching for an economic model that will enable them to compete effectively against those video program suppliers who are not subject to the Commission's ownership regulations.

The need for maximum flexibility in these efforts can hardly be underestimated. Competition among the broadcast networks as well as competition between these networks and other purveyors of news, information and entertainment has never been more intense. At the same time, the diversity of local programming outlets for every American consumer has never been greater. As such, the twin foundations for the dual network rule -- ensuring competition and diversity -- have eroded. The absence of a defensible basis for the rule requires the Commission to eliminate its dual network rule and permit those combinations of television broadcast networks -- if any -- that the marketplace itself deems to be most effective.^{68/} In this way, the Commission would adhere faithfully to the directive of Congress to repeal outdated and unnecessary broadcast ownership regulations.^{69/}

V. CONCLUSION.

Eliminating the UHF discount at this time would have a disastrous effect on the television industry. Not only would it undo 13 years of efforts to foster and develop the UHF service but it also would threaten UHF station viability going into the 21st century. The record in this proceeding could not be clearer. The UHF signal and economic handicap is alive and well in 1998 and the evidence submitted in this proceeding demonstrates that

^{68/} The Commission should defer to the Federal Trade Commission and the U.S. Department of Justice to resolve on a case-by-case basis any competition-related issues that might arise in the context of a particular combination of broadcast networks, as the Commission already does in connection with acquisitions of television and radio stations.

^{69/} 47 U.S.C.A. § 161 (West Supp. 1998).

neither advanced antenna technology, mandatory cable carriage nor the conversion to digital television will ameliorate UHF stations' disadvantaged position when compared to their VHF counterparts. Given the pro-competitive effects of the UHF discount, including the fostering of new broadcast networks, and the intensely competitive and diverse nature of the video programming industry today, the inescapable conclusion the Commission must reach in this proceeding is that the UHF discount must be retained.

The enormous growth of multimedia and video outlets over the last 13 years also warrants action by the Commission to eliminate the dual network rule. This archaic restriction now serves to impede network competition rather than promote it. As this rule no longer serves the public interest, it should be repealed.

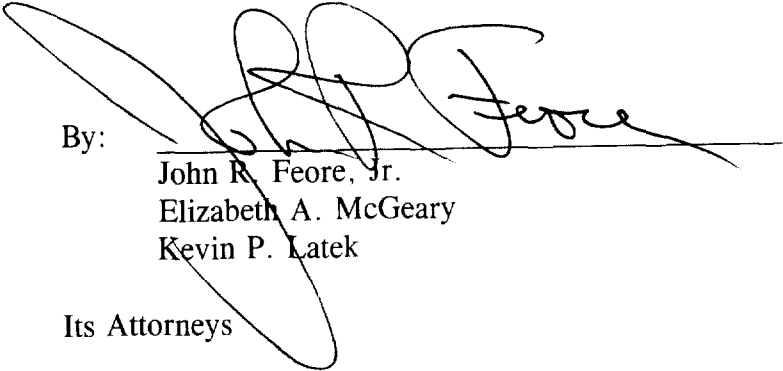
Finally, this proceeding provides the Commission with a unique opportunity to develop policies that would promote new entrant ownership of broadcast television stations. Paxson as well as numerous other broadcasters firmly support Chairman Kennard's goals of enhancing the ownership opportunities for minorities and new entrants. To ensure that these opportunities are meaningful and accomplish their intended result, the Commission must seriously consider the Paxson Diversity Plan and Council Tree's designated entity proposal.

It is only through relaxation of the attribution and ownership rules that the Commission will create the appropriate incentives for investment in new entrant and minority-owned businesses.

Respectfully submitted,

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